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Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

In Re Martin E. Bruetman,

ON PETITION TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF MANDAMUS

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55 pp

ISSUES PRESENTED

The United States District Court for the Northern District of Illinois, Honorable Judge George W. Lindberg and the United States Court of Appeals for the Seventh Circuit Honorable Circuit Judges Frank H. Easterbrook, Terence T. Evans and Ann Claire Williams, for the last 3 years have retained the Petitioner's Passport without cause, in contradiction of their own rulings as well as in conflict with the United States Supreme Court, conflicting with Rules of the Court of Last Recourse of the State of Illinois.

The Petition presents the following issues:

a) Bruetman's rights under the Fifth, Eighth and Fourteenth Amendments have been violated to include the denial of the protection of the due process of law that they afford.

b) The Courts below had demonstrated an arbitrary, usurpatory conduct deprived of any impartiality and materially conflicting with the pertinent Law and Statutes including a material conflict with the Rule 277 (f) of the Illinois Supreme Court.

RESPONDENTS

United States Court of Appeals For The Seventh Circuit:

Circuit Judge Hon. Frank H. Easterbrook,

Circuit Judge Hon. Terence T. Evans

Circuit Judge Hon. Ann Claire Williams

United States District Court for the Northern District of Illinois, Eastern Division

Honorable George J. Lindberg

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OPINIONS BELOW

The Order of the United States Court of Appeals for the Seventh Circuit entered on October 10, 2002, denying the Petition for Writ of Mandamus, is not reported and it is set forth in the Appendix hereto (App. A).

The order entered by the U.S. District Court for the Northern District of Illinois, Eastern Division, dated 9/18/02, denying the motion for release of passport is not reported, and the Minute Order case number 92-7948 Docket entry is set forth in page 10.

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 241 F.3d 586 (7th. Cir. 2001) and it is set forth in the Appendix hereto (App. B)

The Order of the United States Court of Appeals for the Seventh Circuit dated 6/9/01, denying a petition for a Writ of Mandamus, is not reported, and it is set forth in the Appendix hereto (App. C)

The order entered by the U.S. District Court for the Northern District of Illinois, Eastern Division, dated 5/11/00, denying the motion for release of passport is not reported, and it is set forth in the Appendix hereto. (App. D)

JURISDICTIONAL STATEMENT

The United States Supreme Court jurisdiction is pursuant to 28 U.S.C. sections 1254(1) and 1651(a).

The jurisdiction of the District Court for Northern District of Illinois was pursuant to Fed. R. Civ. P. 69 (a) and Illinois Supreme Court Rule 277 (a) (f).

The Jurisdiction of the United States Court of Appeals was pursuant to 28 U.S.C. section 1291 and 1651(a)

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Fifth Amendment, Fourteenth Amendment, 28 U.S.C. 1254 (1). 28 U.S.C.1291, 28 U.S.C. 1651,Federal Rules of Civil Procedure 69 (a), 11 U.S.C. 108 (c), 11 U.S.C 341, 11 U.S.C. 343, 11 U.S.C. 2004, 11 U.S.C. 727, 11 U.S.C. 524,

Federal Rules of Bankruptcy Procedure 3001(f) & 3002 (a), IL. ST. CH. 735 s 5/12-108, IL ST CH 735 s 5/12-701, Illinois Supreme Court Rule 277. (See Appendix)

The Standards for Issuance of a Writ of Mandamus are applicable.

28 USC 1651(a) All Writs Act "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"

This petition is not in lieu of the normal appeal process. The U. S. Supreme Court is the Court of last resort who could issue the Petition for Mandamus since the United States Court of Appeals for the Seventh Circuit has denied twice a Petition for a Writ of Mandamus and Denied an Appeal.

Mandamus anticipates an appeal. *Matter of BBC Intern, Ltd.* 99 F. 3d. 811 (7th. Cir. (Wis), 1996). When waiting until the end of the case would thwart effective correction, the court steps in early. Only exceptional circumstances can justify use of writ of mandamus. *In re Lewis* 212 F. 3d 980 (7th. Cir. 2000). The writ of mandamus and prohibition differ in their focus. The former is positive in the sense that it is used to compel certain actions; the latter is negative in that it is used to prevent certain actions. The relief sought may be stated either positively or negatively, therefore either writ may be used. *Memorial Hospital for McHenry County v. Shadur,* 664 F.2d 1058 *1059 (7th. Cir. 1981.) The party seeking a writ of mandamus bears the burden of showing that his right of relief is clear and indisputable. *United States v Dorfman* 690 F. 2d 1217 *1224 (7th. Cir. 1982). Mandamus is restricted to those situations in which the lower court abused its discretion such that there is a sort of usurpation of power, which will justify the entry of the writ. 28 U.S.C.A. Sec. 1651, 1651(a) Id. *Dorfman.* Two conditions for grant of writ of mandamus are that the

challenged order not be effectively reviewable at the end of case, i.e. that it inflict irreparable harm, and that the order must so far exceed proper bounds of judicial discretion as to be legitimately considered usurpatory in character, or in violation of clear and indisputable legal right, or, at very least, patently erroneous. *Matter of Rhone- Poulenc Rorer, Inc* 51 F. 3d 1293 (7th. Cir. 1995). The error must be one that cannot be adequately corrected by the normal appeal process. *Oswald v. McGarr,* 620 F.2d 1190, 1195 (7th. Cir.1980) The present case has gone through all the normal process of appeal, cannot be adequately corrected and the case has already been closed., *Matter of Rhone-Poulenc* requirement. The Constitutional, legal and factual issues have been raised with a loud silent response by the courts below.

THE RELIEF SOUGHT

Bruetman prays that the Supreme Court issue a Writ of Mandamus directing the Court of Appeals for the Seventh Circuit and the District Court for the Northern District of Illinois, Eastern Division to release to Bruetman Bruetman's U.S. Passport, which Judge Lindberg impounded on January 22, 1999.

STATEMENT OF THE CASE

The present matter originates in a multi-litigation multi-jurisdictional case between the parties, which was begun in 1989 in Argentina, (adjudicated in favor of Bruetman on the merits). Litigation in the U.S. against Bruetman and others was brought by Herbstein as plaintiff, in the United States District Court for the Southern District of New York, in the case captioned "Diego J. Herbstein v. Martin E. Bruetman, et al.," (adjudicated for Herbstein on default judgment.) (Supreme Court docket # 02-4 and 02-95. (*Cert. Denied*))

The Supplementary Proceedings.

The following list of dates and sequence of relevant legal proceedings are material to the legal actions and their

effects as relates to the present Petition for a Writ of Mandamus.

Herbstein on December 4, 1992 commenced supplementary proceedings to enforce the New York judgment pursuant to Fed. Rules of Civ. P. 69. On March 10, 1993 Bruetman attorneys in response to the citations filed appearances as prescribed by Illinois Supreme Court Rule 181 (b), and the court set for a status hearing on April 15, 1993. From April 19, 1993, until December 5, 1993, several hearings took place regarding the matter of the citation that also involved Mrs. Bruetman 's citation, which took place in May 1993. At that time Bruetman's credit cards were delivered to allow Herbstein's attorneys to obtain all records. On September 23, 1993 Herbstein's attorneys acknowledged that they had not availed themselves of the opportunity to review the tendered documents deposited in Bruetman's attorneys' offices since **June 3, 1993**, they had not applied for an extension of the citation to discover assets as prescribed by Illinois Supreme Court 277(f) and supported by Illinois Supreme Court Rule181 (b). The court ordered Herbstein's attorney to immediately review the documents. Bruetman's attorneys noted again that pursuant to Illinois Supreme Court Rule 277 the six months period had expired. (Tr. Hearing 9/23/93).

The court terminated Mrs. Bruetman's citation examination. Id. The Bruetmans with Court agreement signed a release allowing Herbstein's attorneys to obtain from the IRS all Bruetman's joint return tax filings. The court took under advisement the six months period matter.

The court ordered Bruetman to show cause why Bruetman should not be held in contempt of Court. On October 19, 1993, Bruetman's attorneys filed a motion to quash or dismiss the contempt proceeding; the court denied the motion to quash and ordered Bruetman, who was in Argentina, (see Judge Posner opinion in *Philips)* to appear before the court on December 3, 1993 for the citation proceedings. Only in January 1999 Bruetman became aware

that the court had set the December 3, 1993, date and that it had continued the citation proceedings to January 10, 1994. Bruetman did not become aware until January 1999 that on January 14, 1994 the Court entered an order for body attachment for Bruetman " be brought before the court to answer the charge of contempt for his refusal or neglect to comply with the orders of the court." **The order was returned unexecuted, despite the fact that Bruetman was then in Chicago, for the sole reason that Herbstein's attorneys did not cooperate with the Marshal Service.** (Docket # 104) Further, Herbstein's counsel never served Bruetman's counsels of record.

Bruetman was unaware of any pending court proceedings until **October 1998,** when an unlawful garnishment summons was served in Bruetman's bank account.

On **January 22, 1999,** Bruetman's counsel filed an appearance in Court informing the Court that prior to the hearing the parties had agreed on Bruetman's examination on **February 5, 1999**. At request of Herbstein's attorney the District Court ordered Bruetman to surrender his passport to secure his attendance to the agreed examination. Bruetman deposited his passport with the clerk of the court. On **February 5, 1999**, Bruetman appeared for his citation and tendered all documents under his control and possession. Herbstein's attorney never retrieved nor had in his possession the documents tendered in **May, June and September 1993**. After 4 hours of examination and in order to allow Herbstein's attorney to further examine the provided new documentation, the parties agreed on a new session to conclude the examination. Counsel for both parties also began settlement negotiations. During the negotiations Herbstein's counsel filed, a frivolous, with the sole purpose of harassment, motion to hold Mrs. Bruetman in contempt and asked for her incarceration. On **March 22, 1999**, Bruetman, to avoid further harassment to his family that had

begun in 1992 in Boston, Mass.,[1] filed for protection under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division.

On **April 7,1999**, the District Court ordered all pending motions dismissed, with *leave to reinstate* on or before **November 2, 1999**[2]. At the same hearing Bruetman's counsel asked if he could retrieve the passport. The court replied: "If specific need of the passport arises, you can come and ask for it." (Tr. 4/7/99)

On **June 25, 1999**, pursuant to 11 U.S.C. 523 (a) and 727 Herbstein filed an Adversary Complaint to determine dischargeabilty and to deny discharge. On **July 8, 1999**, the Bankruptcy Court entered an order discharging Bruetman pursuant to 11 U.S.C. 727. (Writ Cert.02-4). On **August 10,1999, the New York Judgment expired and has not been revived.** (735 IL. ST. CH. 5/12-108)

On **April 27, 2000,** Bruetman filed a motion for the passport release to attend a Medical Education Seminar in Toronto, Canada. **On May 11, 2000,** the District Court refused to release Bruetman's passport.

On **June 9, 2000**, the Court of Appeals denied a Petition for a Writ of Mandamus.

On **February 21, 2001**, the Court of Appeals affirmed the District Court order refusing the release of Bruetman's passport. *Herbstein v. Bruetman* 241 F. 3d 586(7th. Cir 2001)

On **February-March 2001**, Bruetman underwent two extensive surgical-oncoly procedures, which did not permit

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[1] The Court of Appeals *sua sponte* took judicial notice of the case but ignored the fact that Herbstein had to withdraw the injunctive motion supported by a perjurious affidavit.

[2] Motions dismissed with leave to reinstate by due date and not refiled are automatically dismissed with prejudice and the matter is *res judicata*

him to timely file a Petition for a Writ of Certiorari. (June 28 2001, U.S. Supreme Court Docket).

On **March 22, 2001**, pursuant to the report by an appointed court accountant, the Bankruptcy Trustee issued a final no-asset report.

On **April 24, 2001**, the Bankruptcy Court entered an order dismissing without prejudice Counts III, IV & V that already have been discharged in July 1999. On **May 3, 2001**, nine days later, Herbstein's counsel filed a motion with the District Court to dismiss Buetman's appeal because Counts III, IV &V were still pending. (District Court case 01-2829) Judicial Estoppel. Dishonesty toward the Court.

On **September 18, 2002,** The District Court denied Bruetman's motion to release his passport.

On **October 10, 2002,** The Court of Appeals denied a Petition for a Writ of Mandamus.

REASONS FOR GRANTING THE WRIT OF MANDAMUS

Appellant has been Deprived of Liberty Without Due Process.

A United States citizen right to enter and exit the United States requires the possession of a valid United States passport. *Kent v. Dulles 357 U.S. 116, 78 S.Ct. 1113. Kent* provides a comprehensive review of the different laws, statutes, proclamations, and juridical philosophy that have governed the issuance and regulations of passports as they relate to its need for the purpose of travel outside the confines of the territory of the United States.

The function of the passport is to introduce the bearer to another government and ask for its protection and assistance; it is a political document *Urtetiqui v. D'Arbel* 9 Pet692, 699, 9 L. Ed. 276 (1835) cited in *Kent.* ***1115*. But it is unquestionable that a restriction placed on the use of the passport restricts the traveling freedom of the bearer. Restrictions have been narrowly construed by the Supreme Court and the most accepted are the ones established by Acts of Congress as cited by *Regan v. Wald,* U.S. 222 at 240-242

or by President proclamations such as during war periods: 1812; Civil War, 1918 and 1941 cited in *Kent* ***1116*. Acting Secretary Wilson wrote on April 27,1907, (exactly 92 years prior to Bruetman filing the first motion for releasing the passport) ... "but a passport is not to be refused to an American citizen, even if his character is doubtful".... cited by *Kent* ***1117*.

The restriction of travel by the District Court, affirmed by the Appellate Court, deprived Bruetman of "Liberty." "Liberty" includes one's natural abilities and aptitudes..." "Liberty" generally includes human abilities that do not depend on the government—freedom from restraint, the right to associate with others, the right to travel. *Scott v. Village of Kewaskum* 786 F.2d 338, 340 (7th. Cir. 1986). Freedom to travel is a constitutional liberty related to rights of free speech and association. *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S.Ct. 1659 (1964). It also comprehends the right to work for a living in the common occupations of the community. *Truax v. Raich* 239 U.S. 33, *40, 36 S.Ct.7, **10. The right to travel is a part of the "Liberty" of which a citizen cannot be deprived without the due process of law under the Fifth Amendment. *Kent* ***1117*. The Courts below have failed to demonstrate that they comprehend the abstract concept of "Liberty" as it relates to the impoundment of a passport.

As the Court is aware Bruetman is a naturalized United States citizen. Bruetman's part of his intellectual growing up took place under the dictatorship of Juan Peron. In Argentina the Federal Police issued the passports, they were not issued to students, in case that they were going to Uruguay, where most of the fired professors and other intellectuals had taken refuge. Bruetman was not jailed, nor had any political affiliations but he was a medical student, consequently he was not entitled to have a passport, therefore he was deprived of his "Liberty" without cause. **In this case it is not the police, nor the FBI, it is a member of the judiciary that has deprived Bruetman of his "Liberty"**

without cause and without allowing for the protection of due process of law that makes the greatness of this country. The Courts below failed to understand that "Liberty" is spelled with a capital letter. The intellectual Liberty must be preserved and protected; the safe keeper of such right is the Judiciary. The judiciary here made an arbitrary decision and as consequence a dark stain became part of the annals. The Supreme Court should issue the Writ of Mandamus to erase such spot.

The District Court, Honorable George Lindberg, and the Court of Appeals panel Circuit Judges Hon. Frank H. Easterbrook, Hon. Terence T. Evans and Hon. Ann Claire Williams repeatedly issued orders that violated Bruetman's Constitutional Rights under the Fifth Amendment, which failed to provide Bruetman the protection under the Fifth Amendment by depriving him of the due process of law. The District Court failed to call for a hearing allowing Bruetman to present his case. The Court of Appeals despite Bruetman's requests, failed to order that a hearing be held to confront the baseless verbal outrageous false allegations by his accuser. Rather, the Courts below took Herbsteins's oral representations, totally unsupported, which were outright falsehoods and which at face value clearly violated the law and/or the statutes. Despite the protestations by Bruetman about Herbstein's counsel failure to introduce one piece of evidence in support of his oral outrageous statements in opposition to the release of the passport, (Tr. 5/3; 5/10; 5/11 2000 hearings) the Courts remained impervious, as if Herbstein's counsel verbal statements were equivalent to a positive matching DNA test. The Courts below became part and parcel of the problem.

VIOLATION OF FIFTH, AND XIV AMENDMENT SECTION I.

On September 13, 2002, Bruetman filed a new motion with the District Court requesting the release of his passport, which had been deposited with the court on January 22, 1999, as security for giving a citation examination The motion,

besides the legal foundation, was supported by the fact that on July 19, 2002, Bruetman was advised that the malignancy for which he was receiving treatment since February 2001 has spread to his left lung. (Please see also section "Judge Lindberg judicial conduct"). The District Court as well as the Court of Appeals was aware of the original medical condition since February-March 2001. Surgery was originally scheduled for August 20, 2002, at Northwestern Memorial Hospital, but after consultation with the National Cancer Institute where Bruetman was receiving treatment since July 2001, the procedure was postponed to await the result of further evaluation at the National Cancer Institute to take place on October 1 and 2, 2002, at that time the date would be scheduled.

Bruetman prior to having surgery wished to visit his family in Argentina. (Son, grandchildren and his only sister.) To that effect he needed his passport. The financial conditions in Argentina are of public knowledge, all saving accounts were frozen, and the value of the currency has been devalued by 350%; as consequence it was impossible for them to come to the United States. Therefore the only viable option was for Bruetman to take a short trip to Argentina. Judge Easterbrook in his opinion recognized that other reasons, beyond continuing education, may receive a favorable response by the Court *Herbstein v. Bruetman* 241 F. 3d 586 *588[2]. The legal reasons that will be developed below, as well as the humanitarian grounds presented, lend ample support for granting the motion.

On September 18, 2002, the District Court denied a new Bruetman's motion for the release of his passport supported by legal and humanitarian reasons. (92 C 7948 Dock. # 145). The reasons stated from the bench: "Nothing has changed-Bruetman has the key to his passport".

Indeed, a lot has changed, besides sections of the opinion on *Herbstein v. Bruetman* 241 F. 3d 586 (7th. Cir 2001) supported the September 13, 2002 petition. The essential matter is the denial by Judge Lindberg of the request

for releasing Bruetman's passport and Judge Lindberg's rationale ignoring the law and statutes that control the case.

Bruetman's constitutional rights as contemplated in the Fifth and Fourteenth Amendment have being violated; it would not have been the first time that this occurs in the course of the proceedings. The Courts in the District have observed a loud silence when they did not comment, despite Bruetman repeatedly raising the matter, about the supporting reasons asserted by opposing Counsel: "He [Bruetman] seeks the protection of the courts of this country from his own country. This deserves no countenance and it is contrary to law" The statement speaks for itself. Such written statement by an officer of the court followed by an absolute deafening silence by the courts below is a blatant violation of Bruetman's rights protected by the 14th. Amendment Sec.1.

Bruetman is a proud naturalized United States citizen who has received the Outstanding New Citizen of the Year award (1972) and the DAR Americanism Medal granted by Daughters of the American Revolution for his Trustworthiness, Service, Leadership and Patriotism (1981). In contrast, the objecting Plaintiff is a money launderer, a tax evader and a perjurer. Bruetman has submitted evidence to the lower courts.

The District Court by exceeding its authority was in violation of clear and indisputable legal rights, or, at very least, patently erroneously exceeding its authority *Matter of Rhone-Poulenc Rorer, Inc.* 51 F. 3d 1293 (7th. Cir. 1995) by refusing to release Bruetman's passport. Again, as in May 2000, it failed to provide Bruetman the protection under the Fifth Amendment by depriving him of the due process of law. The District Court failed to call for a hearing allowing Bruetman to present his case. The District Court took the malicious and repeated false representations by Herbstein's counsel at face value, despite the protestations of Bruetman. An equal protection violation occurs when different legal standards are arbitrarily applied to similarly situated individuals. U.S.C.A. Const. Amend. 14; Smith on behalf of

Smith v. Severn, 129 F. 3d 419 (7th. Cir. 1985). "Full and fair opportunity to litigate the issue is determined by the due process of the Fourteenth Amendment", Jones v. City of Alton, Ill., 757 F. 2d 878 (7th. Cir. 1985).

The Court of Appeals in *Herbstein@* 587-589 opinion observes: "Even in cases under the equity jurisdiction (which this is not), judges must respect traditional limitations on their powers, *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 321-24 (1999), unless positive law enlarges them—and no law or rule of which we are aware authorizes impoundment of passports as form of security. *Cf. Guzell v Hiller*, 223 F3d 518 (7th. Cir. 2000)." Yet in the same paragraph the Court of Appeals concluded: "Surrendering one's passport is a common condition of release on bail, which is Bruetman effective status." The Court of Appeals overreached in its conclusion by qualifying Bruetman's "effective status." In criminal proceedings it is common that after hearing when bail is set, the individual must surrender the passport as complement to the bail and to the sole effect that restricts fleeing the country in case it jumps bail. In this case there is not a single court document nor could there be one that states that Bruetman has been indicted, convicted or found in contempt of court and he was in need of bail. At no time did the court asked Bruetman to place bond in lieu of the passport, nor was a hearing set for such purpose, as due process would require. The only attempt was a legally ridiculous suggestion by Judge Lindberg to use nonexistent property of the bankruptcy estate in lieu of the passport. Further, to impound a passport implies a form of "Liberty" restriction, as Judge Easterbrook states, "he is not aware that the impoundment of a passport is a form of security", but then concludes that is a form of bail.[3] *Herbstein* @ 589. Impoundment of the passport for an undetermined period of time without a hearing is a violation of the protection afforded a defendant under the due process

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[3] Synonyms: security, bond, surety, financial guarantee.

of law requirements. Further, if we accept the premise that impoundment is as security, a request for a change in the security also requires a hearing, which Judge Lindberg refused to grant up to September 2002. *Stack v. Boyler* 72 S.Ct.1 (1951); *Connecticut v. Doher* 111 S. Ct. 2105 (1991). Bruetman tendered his passport by order of Judge Lindberg on a motion by Herbstein's counsel to assure Bruetman appearance at his deposition. Bruetman attended the deposition. (See above section underlying proceedings) Further, Judge Lindberg on April 7, 1999 advised Bruetman that if the need arises for his passport he could come and ask for. (Tr. Hearing 4/7/99). When the need arose Judge Lindberg did not release the passport based on the outrageous false unsupported allegations by Herbstein's counsel, which violated the Law, the Statutes and the Rules controlling Professional Conduct.

Judge Posner in his opinion in *Albright v. Oliver*, 975 F. 2d 343 (7th. Cir. 1992) recognizes that as in *Regan* the law "still requires some justification be shown to limiting the right to travel, conceived of as a right conferred by the due process clause, even if the First Amendment is not invoked".

LEGAL ISSUES RELATING TO VIOLATION OF 8TH. AMENDMENT

Bruetman Pre petition Assets: Plaintiff's counsel in his briefs on Judge Kocoras proceedings and the Seventh Circuit, appelle's brief (W.Cert 02-4) stated that they are not interested in Bruetman's pre petition assets, rather the ones "hidden" from the trustee and the bankruptcy court and the post petition assets. Counsel made the first false statement regarding hidden assets at a November 16, 1999, hearing, when he also advised the Court that he has advised the Trustee. The Trustee informed in writing on December 27, 1999, that Counsel had never contacted him orally or in writing. On June 11, 2001, the Bankruptcy Court ordered Plaintiff's Counsel to come with the Trustee on June 13, 2001, which he failed to obey. (W. Cert. 02-4) Any deliberate, clear and unequivocal statement either written or

oral, made in a course of judicial proceedings qualifies as "judicial admission" *In re Lefkas G. Partners N.1017, 153 B.R. 804 (N.D. Ill. 1993)*. Judicial admission refers to issues of fact and not to conclusion of law. *McGaskill v. SCI Management Corp. 298 F. 3d 677*681 (7t. Cir. 2002)*. Counsel assertion is an issue of fact. The bankruptcy court already advised that Plaintiff would not be entitled to any "hidden assets." (Tr. 6/11/01,W.Cert. 02-4).

Plaintiff is not entitled to any post petition assets because he lost any standing in this litigation. By failing to observe Bank. F. Rules of P. sec. 3002: *Raleigh, Chapter 7 Trustee, v. Illinois Department of Revenue, 120 S. Ct. 1951 (2000)[FN 2]*; 11 U.S.C 108 (c) (2). Further, it would be an absurdity that Bruetman would have built any post petition assets when Bankruptcy proceedings are pending. Plaintiff assertion is preposterous legally, factually and does not withstand the minimum scrutiny.

Allegations regarding "hidden assets" must be part of the objections to discharge pursuant to 11 U.S.C. Sec.727. The objections are not existent for two reasons of law: (1) Discharge pursuant to Sec. 727, (7/8/99) and (2) and /or the dismissal of the 727 Counts by motion of Herbstein's counsel. Thus there is no base for any further proceedings regarding the matter. The time has elapsed for reopening the case as provided by 11 U.S.C 727 (e) (1)(2). (C. Appeals Petition Writ of Mandamus exhibits)

In *Herbstein* *588 the Courts stated: "the collection proceedings remains pending in the docket, as does the bankruptcy proceeding." "That time has yet to come, for the district court plans to hold collection proceedings (and the passport) until after the bankruptcy proceeding." Judge Kocoras on September 6, 2001, issued the order affirming the Bankruptcy Court setting July 8, 1999 as Bruetman's discharge date. As matter of law the time that "has yet to come" has already come and gone. The Court of Appeals affirmed, concluding that no sanctions pursuant to 11 U.S.C. Sec. 362 (requested by Bruetman) were in order (Writ. Cert.

02-4). Judge Kocoras order explicitly states that the option was between granting the discharge and denying the discharge, concluding that Bruetman was **discharged** and therefore 11 U.S.C. Sec.362 (c)(3)(C) applies. As consequence, the effects of 11 U.S.C. Sects. 524 and 108(c) have been triggered.

11 U.S.C. Sec. 524 voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727; operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect any debt as personal liability, including post petition assets. As result Herbstein's default judgment has been voided and cannot be enforced.

11 U.S.C. Sec. 108 (c) (2) set the extension of time for non-bankruptcy law proceeding. The 30 days time provided has expired either by applying 11 U.S.C. Sections 524 or 362. As result, no further proceedings can be conducted.

Judge Easterbrook opinion * 589 in a novel theory has extended the validity of Ill. S.Ct. R. 277(f) by as "justice may require". The extension period has expired for long time (November 1999 at the latest), and as matter of law pursuant to 11 U.S.C. Sec. 108 (c). Further, Pursuant to 735 IL ST CH. 5/12-108 **the judgment has expired on August 9, 1999, it has not been revived and can't be enforced.** *Guerteler v. Barlow Woods, Inc.*230 Ill. App. 3d, 596 N.E. 2d.24, 172 Ill. Dec. 745.; *First Nat. Bank in Toledo v. Adkins,* App 4 Dist. 1995, 208 Ill. Dec. 820, 272 Ill. App. 3d 111, 650 N.E. 2d 277.

As matter of law there is no rationale for Bruetman's passport to remain deposited with the Courts since there is not case pending against Bruetman. It is an usurpatory abuse of discretion. As can be readily seen it is a "catch 22" situation. The law supports Bruetman, but the Court below wrongfully concludes "nothing has changed- Bruetman has

the key to his passport" Following the courts reasoning Bruetman will never get his passport; further, it is a fallacy to state that he has the key to his passport.

The courts have violated Bruetman 8th. Amendment, which states: **"Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishment inflicted."**

The founder fathers having in mind the limiting powers of the new government designed the Eighth Amendment. Further, it is accepted that generally applies to criminal law rather than civil law. However this distinction is not absolute. As this Court in *Ingrham v. Wrigth* 430 @ 669 n.37, 97 S. Ct. @ 1411, n 37 considered that it might have application in civil cases mainly as it refers to cruel and unusual punishments. This Court in *Carlson v. Landon*, 342 U.S. 524, 546, 72 S. Ct. 525, 537, 96 L. Ed. 547 (1952) tangentially addressed the matter of "bail." In *Browning-Ferris Industries v. Kelco Disposal, Inc.*, 492 U.S. 266, 109 S. Ct. 2909 (1989) this Court states "Bail, by its very nature, is implicated only when there is direct government restraint on personal liberty, be it in a criminal case or in a civil deportation proceeding." In *Trop v. Dulles,* 78 S. Ct. 590 (1958) the Court also addressed the issue. Among some of the conclusions of this Court: "The classic concept underlying the Eighth Amendment and its proscription against cruel and unusual punishment is nothing less than the dignity of man; the words of the Eighth Amendment are not precise and their scope is not static; the Amendment must draw its meaning from the evolving standards of decency that mark the progress of maturing society. The Eighth Amendment bars denationalization as a punishment". In *Trop* this Court transcribes the colloquy, which occurred during the Congress hearings in 1943, and it is illuminating to read the diverse interpretations that are made between the citizenship and the rights derived from citizenship. Finally in *Browning* this Court affirms that the Eight Amendment does

not apply to issues between private parties and only applies to government abuses.

How do the above concepts apply to this case?

By depriving Bruetman of his passport under the rationale that it is an equivalent to bail, the Courts below have imposed an excessive bail (restraint of liberty) and have imposed an unusual and cruel punishment by depriving Bruetman of his Liberty for undetermined period of time, totally out of proportion with the original rationale for ordering him to surrender his passport, they have offended the evolving standards of decency, they have deprived Bruetman of one of his rights derived from his citizenship. The passport is a political document (*Urtetiqui)* inseparable from the citizenship and the rights derived from citizenship and the courts here have used it as punishment without given consideration to due process. If as punishments an individual who is illiterate is deprived from access to books it may be unusual but unlikely considered cruel; it is not equivalent to deprive a professional from having access to his colleagues in other countries, to visit other centers of higher learning within his discipline. Such punishment is not only unusual but it is cruel. But depriving Bruetman from visiting his most immediate family in the described circumstances is doubtless cruel. It is beyond logic that Bruetman is a flight risk. Bruetman is a physician with a good understanding of his condition; that it is being taken care of by the best experts in the field and in the best medical centers in the world. For Bruetman to risk his potential cure and choosing a sure end by abandoning his treatment to avoid a deposition about assets, which do not exist, is contrary common sense. The Trustee supported by a report from a court appointed accountant filed a final no-asset report. Finally, the matter is not between private parties but by a branch of government (the judiciary) and a private citizen. Consequently the conditions set by the Eighth Amendment are met. (Excessive bail, unusual and cruel and not between private parties)

For the courts to state that the keys to the passport are in Bruetman hands is an absolute fallacy without legal or factual support. First, the Courts ignore that there are not any bases within the law and or the statutes to support such argument. As has been pointed above, Bruetman **has been discharged** and the **case is closed**. The District Court (Writ Cert. 02-4) is clear that 11 U.S.C.362 (c)(2)(C) applies, that the Court of Appeals has affirmed the opinion and that the Supreme Court by denying the Petition for a Writ of Certiorari has left standing the opinions from the courts below. Second, 11 U.S.C. 524 applies; therefore a permanent injunction had been set. 11 U.S.C. 108 (c)(2) is also in effect, since more than 30 days have elapsed from the expiration of the stay. As consequence the Courts have the keys since they are the only authority to order the passport release. The courts fallacy is compounded by the District Court sustaining that Bruetman has to complete a deposition by Herstein's counsel, who is the last arbiter regarding whether he is satisfied, as he reiterated on a September 19, 2002, letter. When Bruetman asked the District Court in June 2001 that the deposition be taken in a room within the confines the Court, Judge Lindberg denied the request. Is the fox guarding the chickens?

The arbitrary usurpatory rulings by the lower courts amply justifies that the Writ of Mandamus be granted. *HERBSTEIN v. BRUETMAN,* 241 F. 3d 586.

The Court of Appeals opinion is written in an unusually, unnecessary and uncalled for harsh tone containing incomplete and inaccurate assertions, takes judicial notice of an already closed case before the Seventh Circuit, but ignoring the outcome and the documentation that are part of the Docket. *Philips Medical Systems International B.V. v. Bruetman*, 8 F3d 600 (7th Cir. 1993) *or Herbstein v. Bruetman and others and The First National Bank of Boston,* Trial Court of Massachusetts # 93-0736, United States Court of Appeals for the First Circuit # 93-1321.

The Court of Appeals opinion, written by Judge Easterbrook, seems more interested in punishing Bruetman, regardless the bare facts before them, which do not allow for his conclusions or whether Bruetman's Constitutional rights have been violated.

Bruetman feels compelled to call the attention of this Supreme Court not only the legal contents of the opinion but to the language employed.

The Court of Appeals employs all kind of uncalled for, unjustified and unsupported statements as part of the opinion trying to impugn Bruetman's conduct.

The opening statement @586 "the refractory Bruetman is back"[4] is gratuitously offensive and factually wrong. The Court of Appeals in its 1993 opinion written by Judge Posner, as to which neither of the panel were members, states:

"...But because Bruetman is deeply involved in litigation in Argentina and may become involved in proceedings in this country to collect the default judgment"... "The only professional misconduct we find in this case was committed by Philips lawyers, and they were not sanctioned." (*sua sponte*) "The court's opinion will be transmitted to the Executive Committee of the U.S. District Court for the Northern District of Illinois for possible disciplinary proceedings against Philips' lawyers." *Philips Medical Systems International B.V. et al. v. Martin E. Bruetman et al.*, 93-9101 10-13 (7th. Cir. 1993). Judge Easterbrook took judicial notice of the case but not of Judge Posner opinion. @587.

The listed synonyms of refractory used to describe Bruetman's conduct, only would be acceptable if to fight for his rights within the framework allowed by the law, triggers the personal dislike of one judge. Such ill-advised wording demonstrates the deeply personal dislike by Judge

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[4] Synonyms: intractable, disobedient, wayward, headstrong, obstinate, unmanageable, noncompliant, stubborn

Easterbrook, who obviously had the right to express it but not in support of curtailing Bruetman's "Liberty." Further such wording rather than strengthening the legal opinion weakens it. There is not any support for such a statement as the Philips case was settled, vindicating Bruetman to the extent that Philips included assuming the balance of Bruetman's legal costs. The settlement was filed with and approved by the District Court in 1996 and available to the Court of Appeals for their review before writing their present opinion. It is not conceivable that a Circuit Judge would continue with his opinion misrepresenting the matter when he states "did not bother to appeal" nor to "pay." Judge Eastebrook "failed" to read the appellant's brief at the time and many of the documents available to them since then. However it is not surprising, for the easiest way out was not to undertake a *de novo* review as required and to rule under the convenient cover provided by Circuit Rule 53, since the opinion can not be cited in other cases or set precedent (Writ Cert. 02-4; 02-95).

The Bank of Boston case, cited in *Herbstein* @587, is one of the most blatant examples of plaintiff misconduct that a litigant may display in front of the Courts. Bruetman was never served because the case entailed an injunctive measure served upon First Bank of Boston. Bruetman obtained copy of all proceedings and made it available to the District Court and to the Court of Appeals. The measure requested was supported by Herbtsein's affidavit, under oath and duly notarized alleging that Bruetman had transferred from Switzerland to different accounts under different names in First Bank of Boston an amount in excess of 2 million dollars. The injunction covered several bank accounts, including names and numbers and addresses in Boston and Argentina. The proceedings were transferred to the Court of Appeals for the First Circuit. The Court ordered Herbstein to place bond. The proceeding covered 46 documents, (briefs, affidavits, depositions) over two inches thick. Herbstein never placed the bond; when confronted with documentary

evidence beyond any reasonable doubt (lack of existence of some accounts, other accounts with a balance that did not exceed $12,000.00, no evidence of any wire transfer of funds, and not one account in the name of Bruetman) that the affidavit in addition to its perjurious, content contained assertions that were not of his direct and personal knowledge and withdrew the motion. (Petition Writ of Mandamus 02-3517). The Court of Appeals has taken out of context the Bank of Boston matter; it resembles the tabloids' cover page, as the headline and the content had nothing to do one with the other. Further, Herbstein and his Counsel have shown the same pattern of misconduct in Chicago. In October 1998 Herbstein served a citation to discover assets to First Chicago Besides the legal violation of IL ST CH 735, (Banking Act) the citation listed an account number for Bruetman and a Social Security number for Bruetman that are totally false. (92-7948) Please see below under Judge Lindberg Conduct section.

The proceedings did not linger until 1999 as the Court of Appeals in *Herbstein @ 587*opinion states, and Bruetman remained in Chicago until late 1993 when the Court of Appeals issued its opinion in *Philips.* Although exact dates in some circumstances may not be material to the case, in this instance its correctness is essential. In October 1998, Herbstein served, violating IL ST CH 735 5/12-701, a garnishment (non wages) summons on First Chicago Bank on the accounts of Bruetman. Herbstein waited until January 1999, over 3 months, to file a motion to turn over assets and enforce what he called misleadingly a "contempt order" against Bruetman. In fact, Bruetman was never found in contempt of court, as Judge Easterbrook playing with words concluded. Bruetman had a window of opportunity to flee the jurisdiction from October 1998, until January 1999. Bruetman had opened Bank accounts in his name in 1996. Bruetman never fled the jurisdiction and fully cooperated with the courts. These facts speak for themselves, and the Court of Appeals has erred by trying to support its opinion

using baseless conclusory, unsupported statements such as: "Bruetman has the propensity to leave the country when the heat is turned up..." Please see page 3 above regarding all events date by date from March 10, 1993 to January 14, 1994 and February 2, 1994 (M. Service). Judge Easterbrook says Bruetman used the filing for bankruptcy as "excuse from attending another session". Judge Easterbrook is plainly wrong. Filing for bankruptcy does not avoid debtor from depositions regarding assets. 11 U.S.C. 341-343 mandates the debtor to submit him/or herself to a deposition by the trustee and any other interested party. Herbstein's counsel attended not one but two sessions pursuant to Sec. 341 where he was given all opportunities to participate. Further as Bruetman had pointed out to the Court of Appeals, Fed. R. Bank. P. 2004(b) provide further opportunity for discovery and as the Supreme Court has described it as "a searching inquiry into the condition of the estate to assist in discovering and collecting the assets, and to develop facts and circumstances which bear upon the question of discharge" *Bronston v. U.S.* 409 U.S. 352, 357 (1973). The incontrovertible fact is that Herbstein did not avail himself of the opportunities provided by the Statute since his case would have been over in 24 hours, and so he waived any rights. In another misuse of wording Judge Easterbrook states that Bruetman "soon implored." The use of the system of justice by no means is imploring, perhaps Judge Easterbrook thought that Bruetman was addressing the Court of King George and throwing himself at his mercy. *588 Judge Easterbrook states "Bruetman merits for appeal it is to laugh." If the merits are laughable the petition should be frivolous and dismissed on such grounds but the use of the words "laugh" it is inappropriate, clearly reflecting Judge Easterbrook personal feelings. If he tried to demean Bruetman he has failed, but he has shown his flawed judicial reasoning. Further, Judge Easterbrook failed to quote any transcription of hearings regarding the District Court opinion of Bruetman as a "flight risk", but derives his conclusions from the brief by the

Appellee who is a consummate perjurer and liar. @ 589 Judge Easterbrook after going into a lengthy dissertation concludes "has the keys in his own pocket-so Bruetman can get his passport back whenever he pleases. All he need to do is complete the examination, fully disclosing all his assets." It is legally wrong, Citations are not allowed during normal Bank. Proceedings, 11 U.S.C. 362 (a) and that is the rationale behind 11 U.S.C. 341-343 and Fed. R. Bank. Pr. 2004(b). Some of the issues were discussed above but his conclusion regarding Ill. S. Court 277(f) is unusually flawed, which raises the question regarding the fairness of Judge Easterbrook. Further, it is materially in conflict with Rule 277 (f) of the Illinois Supreme Court. Specifically he misapplies *FTC v. Ruggiero* 994 F. 2d @ 1228, where the Court entered the order from the bench before the six month period had expired. It ignores *Federal Loan Corporation v Harris* 17 Ill App. 3d 49, 49, 308 N.E. 2d 125, 127 (1st. Dist. 1974) where contempt proceedings were undertaken, a writ of attachment was issued; the Court emphasized that the creditor had let more than six month go without securing any extension, which extensions were available by leave of court without the allegations of fact required by Rule 277 (f). The **Creditor must apply** for the extension, he never applied, and the District Court did not extend it *sua spont.* Judge Easterbrook produced the novel theory of equal time. Herbstein had had years to depose Bruetman under Ill. S. Court R. 277 (f), when time, expired either by applying for extension or by using 11 U.S.C. 341-343 and Fed. R. Bank Pr. 2004(b). Rather he lied to the courts and found fertile grounds.

JUDGE LINDBERG CONDUCT:

Bruetman in a June 1, 2001 motion advised Judge Lindberg that there probably were enough reasons to support a request to be disqualified but Bruetman preferred the "high road" approach of utilizing the appeals process. *28 U.S.C.A.455 (a).* (Docket #119, pages 7-8) Court actions, while they may not have been inspired by personal animosity

and bias against defendant in the Judge's heart or mind, lend themselves to the perception of lack of impartiality when it is to be left to a well-informed independent observer. 28 U.S.C.A. 455(a). Impartiality might be reasonably questioned, not in the mind of the judge himself or even necessarily in the mind of the litigant filing the motion, but rather in the perception of reasonable man. *U.S. v. Martorano,* CA. 1 (Mass) 1980, 620 F. 2d 912*; Mc Cann v. Communications Design Corp.* D. Conn, 1991, 775 F. Supp. 1506.

Many rulings by Judge Lindberg and the grounds for such rulings allows to any well informed outside observer to conclude; I have already made up my mind, do not confuse me with legal facts. Judge Lindberg prejudicial conduct toward Bruetman has shown throughout the proceedings.

Chicago 1993-1994: Herbstein's counsel requested that Bruetman be held on contempt of court, and obtained a rule to show cause and a body attachment order in January 1994 without serving Bruetman's counsels. Bruetman was in Chicago as a copy of his stamped passport submitted to the District Court proved it. On February 2, 1994 the Marshall Service returned the order due to the lack of cooperation by Plaintiff's counsel. Bruetman became aware of the February report by the Marshall Service when became Pro Se (10/16/00) and begun by reviewing the Docket entries since the inception of the case. Counsel asserted in January 1999, that Bruetman was in contempt of Court based in the January 1994 order. Counsel also repeated the same assertion in May 2000, hearings regarding the passport. Judge Lindberg when Bruetman filed a complaint for Counsel's violation of Rule 11 ruled that Bruetman should have produced an affidavit regarding the veracity of the Marshall Service report. (Dock. #104). It is a legal absurdity, the entry by an Agency of the U.S. Government in response to a Court order and docketed is enough evidence. It behooved Counsel or the Court to question the veracity of the entry.

Counsel in May 2000 alleged that Bruetman had an Argentinean Passport and provided a number of the alleged passport; asserting that Bruetman was a flight risk. (Tr. 5/3/00; 5/11/00). Counsel acknowledged that he was aware of Bruetman's presence in Chicago and his address. Why didn't he notify the Marshall Service or request a new Court order for body attachment? Any answer other than Counsel had a well-designed harassment scheme including the misusing of the Court to accomplish his goal defies logic. Counsel never provided a scintilla of evidence of such outrageous statement regarding the two passports. Judge Lindberg offered to exchange one passport for the other. Such offer is against operation of law, and would have been valid only in case that the Argentinean passport exists. Judge Lindberg should have known that when an individual becomes a U. S. citizen he surrenders any foreign passport, except when there is a U.S. treaty that allows for holding two passports, such as with Israel. Further, shouldn't, Judge Lindberg have questioned how Counsel obtained the alleged Argentinean passport number?

In 1999 Counsel had no difficulty in serving Bruetman through counsel. Again Counsel misled the courts by filing a motion to enforce the "contempt order". False. The original order was to show cause but at no time Bruetman was found in contempt. Bruetman had never been advised about a court date. (Ron Tash Affidavit, Record). (Dock. 87-99)

In ruling in a motion asking sanctions against Herbstein's Counsel for violation of the Illinois Banking Act, Judge Lindberg denied it because is "part of the Criminal Code" therefore Bruetman was not in a legal position to file such motion. IL. ST. CH. 735 s 12-701 is part of the Illinois Civil Code. The motion had attached as exhibits each section of the Statute. It is unusual that Judge Lindberg who was the First Controller of the State of Illinois, head of the Judiciary Committee in the Illinois House would confuse the Banking Act placing it as part of the Criminal Code. Shouldn't Judge

Lindberg, when he became aware the possibility of serious violation of banking laws, referred the matter rather than ignoring it.

A confidential letter from a distinguished cancer specialist was addressed to Judge Lindberg to discuss Bruetman's medical condition. The letter begins "**Confidential for the Court"** and concludes "**This information is provided to the Court with the understanding that it is confidential as it involves a medical condition of a patient**" Judge Lindberg not only questioned the veracity of the letter but also made it available to opposite counsel in open court without at least issuing a protective order. Further Judge Lindberg requested from opposite counsel to brief and answer the letter regarding Bruetman's medical condition. Bruetman's remark during a late hearing was clear "while the laws of this country allows him to practice law Pro Se, neither the Court nor the Defendant's counsel are allowed to practice medicine" Counsel response does not deserve a comment because it would be demeaning and descend to unacceptable levels of incivility; it should not be part of a silent court record. The confidentiality of Medical information is absolutely protected by Federal and State law, including by the Illinois Medical Studies Act. In *Memorial Hospital for McHenry County* the Seventh Circuit underscored the need for protecting the confidentiality of medical information and to that effect concluded that when there is judicial need for such information, it should be under a protective order and if necessary be reviewed in chambers. The District Court is supposed to be the safeguard of the confidentiality of medical information and failed to do it. The dislike for Bruetman by Judge Lindberg could only justify Judge Lindberg legal obfuscation leading to his failure to protect confidential medical information. Simple question; if Bruetman would have been a defendant for disclosing medical information entrusted to him only; how would Judge Lindberg have ruled?

Counsel in June 2001 filed a motion to show cause against Bruetman despite having been served with a notice of appeal. Judge Lindberg in a hearing when Bruetman was not present coached Counsel in how to get around by suggesting that Counsel files an emergency motion with the Seventh Circuit requesting that the appeal be denied asserting that it was frivolous. (Tr. 6/27/01) The issue is not the court rulings against Bruetman, the issue is the content and analysis supporting the rulings. The above reasons support a conclusion or at least a perception of unfairness or partiality.

In a December 2000 letter from Counsel in response to Bruetman questioning his personal offensive statements, he stated the Courts in this district do no pay attention to what is said in open court. Furthermore his statements regarding Bruetman are "pale" compared to Judge Lindberg's statements about Bruetman. The letter was attached to a Bruetman's motion and in Judge Lindberg's opinion it was conspicuously absent any reference to it.

The September 18, 2002, ruling denying the motion requesting the passport release because "nothing has changed" since May 2000 is a fallacy and the legal reasoning supporting Bruetman's motion has been discussed above. Judge Lindberg actions resemble a plea bargaining proceeding. Prosecutors are entitled to such procedures but judge's role is to approve or reject them but not to act as prosecutors.

The above review of facts, not allegations, reminds Bruetman that when the Inquisition tried Galileo Galilei for supporting Copernicus theory about the earth movement, and Galileo, after renouncing, uttered "E pur si muove." The passport retention has been as a punishment measure that violates Bruetman's The issue is not that Judge Lindberg erred in one order or misapplied the law once. The above shows a clear and distinct pattern of issuing opinions against Bruetman by grossly flawed arguments. We are not in the presence of misapplication of properly stated rule of law.

SUMMARY- CONCLUSION

There is not a pending legal action pursuant to the following statutes: the Judgment had long expired (8/10/99) and has not been revived, 11 U.S.C. Sections 362, 524, pursuant to 108 (c) (2) the time has expired on 8/8/99, pursuant to Fed. Rules Bank. Pr. 3001 and 3002 Herbstein has not standing as (8/30/00) which leads to conclude there is no pending legal cause for holding Bruetman's passport. The Courts below have not legal support to conclude, "Nothing has changed since May 2000". Plaintiff has waived all its rights by failing to meet any and all deadlines set by the Law to begin or continue any cause of action, which the Courts below refused or failed to recognize, denying any support to, "Bruetman has the key to his passport." The present legal condition, byproduct of the orders by the courts below leads to only one possible legal conclusion; Bruetman has been deprived from his passport and "Liberty" ad infinitum without cause, this is a violation of the rights guaranteed by the Fifth, Fourteenth and Eighth Amendments. In conclusion the Petition for a Writ of Mandamus should be issued.

Respectfully submitted.

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Chicago, Illinois 60610
312 944 0782

(Appendix A)

No. 02-3517

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

IN RE: Martin E. Bruetman, Doctor,
Petitioner.

Application for Writ of Mandamus, Northern District of Illinois, Eastern Division No. 92 C 7948
George W. Lindberg, Judge

October 10, 2002

Before

Hon. FRAN H. EASTERBROOK, Circuit Judge
Hon. TERENCE T. EVANS, Circuit Judge
Hon. ANN CLAIRE WILLIAMS, Circuit Judge

Upon consideration of the PETITION FOR WRIT OF MANDAMUS, filed on September 30, 2002, by pro se petitioner,

IT IS ORDERED that the petition is DENIED.

(Appendix B)

Diego J. Herbstein, Plaintiff-Appellee, v. Martin E. Bruetman, Defendant-Appellant.

No. 00-2523

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

241 F.3d 586; 2001 U.S. App. LEXIS 2551

January 17, 2001, Argued

February 21, 2001, Decided

PRIOR HISTORY:
[**1] Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 92 C 7948. George W. Lindberg, Judge.

DISPOSITION:
Affirmed.

COUNSEL:
For DIEGO J. HERBSTEIN, Plaintiff - Appellee: Richard Steck, Chicago, IL USA.

For MARTIN E. BRUETMAN, Doctor, Defendant - Appellant: Donald L. Metzger, METZGER & ASSOCIATES, Chicago, IL USA.

JUDGES:

Before Easterbrook, Evans, and Williams, Circuit Judges.

OPINIONBY:
Easterbrook

OPINION:

[*587]

Easterbrook, *Circuit Judge*. The refractory Martin Bruetman is back. Almost a decade ago Bruetman sustained a $ 19 million default judgment when he left for Argentina rather than participate in discovery during a civil suit in Chicago. We told the district court to give Bruetman a second chance if he returned to the United States and cooperated fully. *Philips Medical Systems International, B.V. v. Bruetman, 982 F.2d 211 (7th Cir. 1992)*. Bruetman returned but bridled at following directions. He announced that he would be the judge of which judicial orders would be implemented. That defiant stance fell well short of full cooperation, we held when affirming the renewed entry of default judgment. *Philips Medical Systems International B.V. v. Bruetman, 8 F.3d 600 (7th Cir. 1993)*.

Chicago was only one venue for litigation against Bruetman. Diego Herbstein also had sued Bruetman, whose disdain for orderly legal process led to **[**2]** a default judgment of $ 2.7 million in federal court in New York. Bruetman did not bother to appeal that judgment, but neither did he pay. Herbstein initiated collection proceedings in Boston (*see Herbstein v. Bruetman, 1993 U.S. Dist. LEXIS 2573* (D. Mass. Feb. 16, 1993)) and Chicago. As Fed. R. Civ. P. 69(a) provides, enforcement proceedings are conducted in accord with state law--for the Chicago proceeding, Ill. S. Ct. R. 277. In January 1993 the district court in Chicago issued a citation requiring Bruetman to appear for examination under oath. He did not appear, and when the examination was

rescheduled he left this country without warning, again finding Argentina more to his liking.

Eventually the district court issued an order for Bruetman's arrest (quaintly called a writ of "body attachment"), but the papers were returned unexecuted. The proceeding lingered on the docket until January 1999, when a private detective tracked down Bruetman, who had returned to the United States without notifying the court or Herbstein. The district judge then gave Bruetman a way to avoid confinement: he could surrender his passport to ensure that he remained available until he had identified all of his assets. **[**3]** Bruetman handed over the passport, and at long last he submitted to an examination under oath. One day proved insufficient and the examination was adjourned, but before it could resume Bruetman filed a bankruptcy petition and asserted that this excused him from attending another session.

Bruetman soon implored the district court to release his passport, contending that with the bankruptcy under way the collection proceeding should be dismissed. After the bankruptcy court modified the automatic stay to allow the district judge to rule on this motion, the judge denied Bruetman's request, remarking that he had been untrustworthy in the past and should be kept within the United States to allow collection if the bankruptcy court did not discharge Bruetman's substantial debt to Herbstein. Bruetman has appealed from this order. While the appeal was pending, Bankruptcy Judge Schmetterer held that Bruetman's debt to Herbstein **[*588]** arises from Bruetman's fraud and embezzlement, so that *11 U.S.C. § 523*(a)(2)(A) and (a)(4) preclude its discharge. *In re Bruetman, 2000 Bankr. LEXIS 1476* (Bankr. N.D. Ill. Dec. 12, 2000).

Appellate jurisdiction is the first issue we **[**4]** must consider. The collection proceeding remains pending on the court's docket, as does the bankruptcy proceeding. As a rule, appeal must await the terminating order--the decision that

"'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Van Cauwenberghe v. Biard, 486 U.S. 517, 521-22, 100 L. Ed. 2d 517, 108 S. Ct. 1945 (1988),* quoting from *Catlin v. United States, 324 U.S. 229, 233, 89 L. Ed. 911, 65 S. Ct. 631 (1945).* That time has yet to come, for the district court plans to hold the collection proceeding (and the passport) until after the bankruptcy proceeding. Yet we also know from *Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 93 L. Ed. 1528, 69 S. Ct. 1221 (1949),* that an order to post security can be immediately appealable, under what has come to be called the "collateral order doctrine." *Cohen* held that an order to post a bond as security for payment of costs is immediately appealable because it finally determines an issue collateral to the merits of the suit, is unreviewable at the end, and is too important to leave without the possibility of review. *See also Swint v. Chambers County Comm'n, 514 U.S. 35, 42, 131 L. Ed. 2d 60, 115 S. Ct. 1203 (1995).* **[**5]** We could not find any case dealing with the application of the Cohen principle to passports, but the template fits. Posting a passport as security, like posting a bond as security, is unrelated to the merits of the case and correspondingly can't be reviewed after a final decision. No court would prevent Herbstein from executing on assets located during the proceeding just because Bruetman should have been allowed to travel abroad while it was pending. Whether a litigant enjoys an element of personal freedom such as ability to travel is certainly no less important than whether that litigant must post a bond. *Cf. Kent v. Dulles, 357 U.S. 116, 2 L. Ed. 2d 1204, 78 S. Ct. 1113 (1958).*

So the critical question is whether the district court's order finally determines the disposition of the passport while the case continues. Herbstein suggests that the decision may have been temporary rather than final; perhaps Bruetman could have his passport back if he asked again, with better support. Bruetman told the district court that he needed the

passport to attend a medical conference in Canada; maybe if he had a better reason the district judge would act favorably. Although we cannot **[**6]** rule out the possibility that Bruetman could yet induce the judge to change his mind, we read the judge's decision as conclusive. When denying Bruetman's motion for release of the passport, the judge did not say that the conference was an insufficient reason. The judge said, rather, that Bruetman had demonstrated his faithlessness and might well leave the United States indefinitely if given the opportunity. Bruetman's conduct affords ample cause for that concern. Because the district judge's reason is unrelated to a particular trip that Bruetman might want to take, the decision to withhold the passport must be deemed conclusive. All components of the collateral order doctrine have been satisfied, and we have appellate jurisdiction.

As for the merits of Bruetman's appeal: it is to laugh. Just as the district judge said, Bruetman has demonstrated a propensity to leave the country when the heat is turned up, so if Herbstein is to have a fighting chance of locating assets on which to execute, Bruetman must be kept here until the examination process ends. Bruetman's only realistic alternative to handing over his passport was to be imprisoned (for civil contempt of court) while the process **[**7]** ran its course. Someone who had always followed the rules would have a much stronger position. Judges can't routinely immobilize litigants. Even in cases under the equity jurisdiction (which this is **[*589]** not), judges must respect traditional limitations on their powers, *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 321-24, 144 L. Ed. 2d 319, 119 S. Ct. 1961 (1999),* unless positive law enlarges them--and no law or rule of which we are aware authorizes impoundment of passports as a form of security. *Cf. Guzell v. Hiller, 223 F.3d 518 (7th Cir. 2000).* But a judge does have the power to imprison a recalcitrant litigant for contempt, implying the lesser power to set

conditions on freedom. Surrendering one's passport is a common condition of release on bail, which is Bruetman's effective status. (This perspective reinforces the jurisdictional conclusion, for orders setting terms of bail are appealable. *Stack v. Boyle, 342 U.S. 1, 96 L. Ed. 3, 72 S. Ct. 1 (1951).)* Just as a litigant held in civil contempt has the keys in his own pocket--for he will be released as soon as he cooperates--so Bruetman can get his passport back **[**8]** whenever he pleases. All he need do is complete the examination, fully disclosing all of his assets. Then the proceedings will end and Bruetman will be free to travel (though his assets must stay behind). Bruetman's enduring refusal to cooperate--first by failing to appear for examination, then by leaving the country, next by concealing his return to the United States, and now by using bankruptcy as the excuse for refusing to undergo more questioning--amply justifies restricting his ability to skip the country yet again.

Nonetheless, Bruetman insists, the collection proceeding should be dismissed without taking any further evidence. He gives two reasons: the bankruptcy proceeding and the long duration of the collection proceeding. Neither carries the day. A bankruptcy court does not attempt to enforce judgments; the court determines creditors' entitlements, but after these have been fixed it remains essential to lay hands on the debtor's assets, so there is room for collection proceedings such as this. Even if the default judgment were treated as creating an ordinary unsecured debt subject to discharge, Bruetman still would have to surrender all of his assets (other than those covered **[**9]** by an exemption). Bruetman has fought tooth and nail to avoid revealing his assets; we cannot imagine why an asset-discovery proceeding under way for eight years should be dismissed and Herbstein forced to start from scratch in the bankruptcy--especially when the bankruptcy might itself be dismissed as filed in bad faith. The collection proceeding has outlasted the six-month line in Ill. S. Ct. R. 277(f), but that rule adds: "The court may, however,

grant extensions beyond the 6 months, as justice may require." Justice requires an extension, so that Bruetman's shenanigans do not defeat his creditor's rights. Herbstein is entitled to six months of *cooperation* from Bruetman. *See RTC v. Ruggiero, 994 F.2d 1221, 1228 (7th Cir. 1993).* So far as we can see, however, he has received only one day of cooperation in an eight-year period. This citation proceeding will continue until Herbstein has received his due.

Affirmed

(Appendix C)

No. 00-2331

United States Court of Appeals
For the Seventh Circuit

IN RE: MARTIN E. BRUETMAN, Doctor
Petitioner.

Application for Writ of Mandamus Northern District of Illinois, Easter Division No 92-C-7948

June 9, 2000

The following are before the court;

1. PETITION FOR WRIT OF MANDAMUS, filed on May 24, 2000, by counsel for the petitioner.

2. MOTION TO FILE RESPONSE TO PETITION FOR WRIT OF MANDAMUS INSTANTER. Filed on June 8, 2000. by counsel for the real-party-in-interest.

IT IS ORDERED that #2 is GRANTED. The clerk of this court shall file INSTANTER the tendered copies of the Response to Petition for Writ of Mandamus.

IT IS FURTHER ORDERED that #1 is DENIED.

(Appendix D)

No. 92-C-7948

Untited States District Court for
the Northern District of Illinois

DIEGO J. HERBSTEIN,
Plaintiff-Appellee,

V

MARTIN E. BRUETMAN, Doctor,
Defendant-Appellant.

ORDER OF JUDGE GEORGE W. LINDBERG

May 16, 2000

(10) [Other docket entry] Defendant Martin E.. Bruetman's motion for court to hear emergency motion for release of passport is granted. Hearing held in open court on May 11, 2000. Defendant's motion for release of passport is denied for the reasons stated in open court. This order is entered nunc pro tunc May
11, 2000.

(Appendix E)

CONSTITUTIONAL PROVISIONS, STATUTES, CODES PROVISIONS INVOLVED

UNITED STATES CONSTITUTION.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in case arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CODE

11 U.S.C 341.

Meeting of creditors and equity security holders

(a) Within reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside a meeting of creditors.

(b) The United States trustee may convene a meeting of any equity holders.

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.
(d) Prior to the conclusion of the meeting of creditors or equity security holders, the trustee shall orally examine the debtor to ensure that the debtor in a case under chapter 7 of this title is aware of—
(1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history,
(2) the debtor's ability to file a petition under different chapter of this title,
(3) the effect of receiving a discharge of debts under this title; and
(4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d) of this title.

11 U.S.C. 343

Examination of the debtor. The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any truste or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

11 F.R. Br. P. 2004 EXAMINATION. Pertinent sections
(a) *Examination on Motion.* On motion of any party in interest, the court may order the examination of any entity.
(b) *Scope of the Examination.* The examination of an entity under this rule or of the debtor under s 343 of the Code may relate only to the acts, conduct, or property or to any liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to discharge.
(c) *Compelling Attendance and Production of Documentary Evidence.* The attendance of an entity for examination and the production of documentary evidence may be compelled in

the manner provided in Rule 9016 for the attendance of witness at a hearing or trial.

(d) *Time and Place of Examination of Debtor.* The Court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

11 U.S.C. s 362 (a) (c)

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stat, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

(2) The enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title.

(3) Any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.

(4) Any act to create, perfect, or enforce any lien against property of the estate.

(5) Any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title.

(6) Any act to collect, assess, or recover a claim against the debtor that arose before the commencement under this title.

(7) The setoff of any debt owing, to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
(8) The commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(c) Except as provided in subsections (d), (e), and (f) of this section -

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

(2) the stay of any other act under subsection (a) of this section continues until the earliest of -

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

28 U.S.C. SECTION 1254 (1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods.

By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. SECTION 1291

The court of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final deceisions of the district courts of the United States, the United District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United shall be limited to the States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292 (c) and 1295 of this title.

FEDERAL RULES OF CIVIL PROCEDURE.
RULE 69 (a) EXECUTION

(a) IN GENERAL. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

IL. ST. S. Ct RULE 181 (b).
Rule 181. Appearances.

(b) When Summons Requires Appearance on Specified Day. (1) Action for Money. Unless the "Notice to Defendant" (see Rule 101(b)) provides otherwise, an appearance in a civil action for money in which the summons requires appearance on a specified day may be made by appearing in person or by attorney at the time and place specified in the summons and making the appearance known to the court, or before the time specified for appearance by filing a written appearance, answer, or motion, in person or by attorney. The written appearance, answer, or motion shall state with particularity the address where service of notice or papers may be made upon the party or attorney so appearing. When a defendant appears in open court, the court shall require him to enter an appearance in writing. When an appearance is made in writing otherwise than by filing an answer or motion, the defendant shall be allowed 10 days after the day of appearance within which to file an answer or motion, unless the court, by rule or order, otherwise directs.

ILLINOIS SUPREME COURT RULE 277 (f).
Supplementary Proceedings. Pertinent.
(f) When Proceeding Terminated.
A proceeding under this rule continues until terminated by motion of the judgment creditor, order of the court, or satisfaction of the judgment, but terminates automatically 6 months from the date of (1) the respondent's first personal appearance pursuant to the citation or (20 the respondent's first personal appearance pursuant to subsequent process issued to enforce the citation, whichever is sooner. The court may, however, grant extensions beyond the six months, as justice may require. Orders for payment of money continue in effect notwithstanding the termination of the proceedings until the judgment is satisfied or the court orders otherwise.
Committee Comments: This is former Rule 24 without change in substance, except for changing 30 days to 28 days in paragraph (f).

11 U.S.C. 108 (c)

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of -

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

11 U.S.C. Sect. 727 (c) (pertinent)

(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if -

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or

(3) the debtor committed an act specified in subsection (a)(6) of this section.

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge -

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of -

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

11 U.S.C. Section 524. Effect of discharge

(a) A discharge in a case under this title -

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1) (FOOTNOTE 1) of this title, or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

Federal Rules of Bankruptcy Procedure

3001 (f) Evidentiary Effect. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

3002 (a) Necessity for Filing. An unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3002, 3004 and 3005.

IL. ST. CH. 735 s 5/12-108

Limitation on enforcement (a) Except as herein provided, no judgment shall be enforced after the expiration of 7 years from the time the same is rendered, except upon the revival of the same by a proceeding provided by Section 2-1601 of

this Act; but real estate, levied upon within the 7 years, may be sold to enforce the judgment at any time within one year after the expiration of the 7 years. A judgment recovered in an action for damages for an injury described in Section 13-214.1 may be enforced at any time. Child support judgments, including those arising by operation of law, may be enforced at any time.

IL. ST. CH. 735 s 5/12-701

Affidavit for garnishment; Contents. Upon the filing by a judgment creditor, its attorney or other designee of (1) an affidavit that the affiant believes any person is indebted to judgment debtor, other than for wages, or has in his possession, custody or control any other property belonging to the judgment debtor, or in which the judgment has an interest, which person shall be identified as the garnishee, and includes the las address of the judgment debtor known to the affiant as well as the name of the judgment debtor, (2) the garnishment notice required by Section 12-705, and (3) written interrogatories to be answered by the garnishee with respect to the indebtedness or other property, the clerk of the court in which the judgment was entered shall issue summons against the person named in the affidavit commanding him or her to appear in the court as garnishee and answer the interrogatories in writing under oath. The interrogatories shall require that the garnishee certify that a copy of the completed interrogatories, as specified in subsection (b) 12-707, has been mailed to the judgment debtor and shall be in a form consistent with local court rules.